

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
Eastern Division**

Susan Beiersdorfer *et al.*,

Plaintiffs,

v.

Frank LaRose *et al.*,

Defendants.

No. 4:19-cv-00260

The Honorable Benita Y. Pearson

**Plaintiffs' Motion to Strike, or
alternatively Reply to, Lucas and
Mahoning BOEs' Opposition to
Motion to Amend Complaint**

**Motion to Strike Dismissed-Parties' Briefs Opposing Motion for Leave to Amend
Complaint**

Amending the Complaint to include Williams County does not change the August 30 ruling as to the Secretary and the two dismissed BOEs. That ruling dismissed the claims against those three parties, but, as clarified on September 4, did not end the case before this Court. Thus, because Lucas and Mahoning BOEs are no longer parties to the case before this Court, Plaintiffs move to strike their filings (Dkts. 73, 74) opposing Plaintiffs' Motion for Leave to Amend Complaint (Dkt. 72).

Alternatively, Reply to Dismissed-Parties' Opposition Briefs to Motion for Leave to Amend Complaint

Alternatively, Plaintiffs reply to Lucas and Mahoning BOEs' opposition below:

Plaintiffs' do not seek to reintroduce claims against the three parties that this Court dismissed from this case on August 30: the Secretary of State and the Boards of Elections of Lucas and Mahoning Counties. Rather, Plaintiffs' proposed Amended Complaint adds parties from Williams County, concerning events there that recently occurred and therefore could not have been included in the original Complaint.

The original Complaint named the Secretary of State, and Lucas and Mahoning BOEs, and brought claims against those three parties, as well as the remaining parties in the case. The Secretary and Lucas and Mahoning BOEs successfully brought dispositive motions, and the Court's August 30 Opinion and Orders ruled on all of Plaintiffs' claims against the Secretary and Lucas and Mahoning BOEs, dismissing with prejudice (except without prejudice for the 11th amendment claim) all claims against these Defendants. (Dkts. 69-70.)

On September 4, the Court issued an order without document number stating in full: "Order [non-document] The case remains active as to all Defendants not addressed in the Court's ruling at ECF No. [69]. The schedule established in ECF No. [61] shall be followed. Judge Benita Y. Pearson on 9/4/2019. (JLG)." Thus, this case is still active before this Court as to all the Defendants except those dismissed on August 30.

Lucas and Mahoning BOEs appear to suggest that Plaintiffs should amend the Complaint to both add Williams County and remove the Secretary and both dismissed BOEs. But if Plaintiffs removed those parties from the Amended Complaint it could be interpreted that Plaintiffs had never brought claims against those parties, or voluntarily dismissed those claims through removing them from the Complaint upon amendment.

Plaintiffs need to preserve the dismissed claims against the Secretary and the Lucas and Mahoning BOEs for appeal, which means those claims need to stay in the Complaint.

Respectfully submitted on October 8, 2019,

/s/ Terry J. Lodge

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Certificate of Service

I certify that I electronically filed this document with the Clerk of the Court for the United States District Court for the Northern District of Ohio by using the Court's CM/ECF system. The other parties are Filing Users and are served electronically by the Notice of Docket Activity.

Dated: October 8, 2019

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